

1 James Alan Bush
2 1745 De Marietta Avenue #3
3 San Jose, CA 95126
4 (408) 982-3272

5 Plaintiff in pro per
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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CALIF.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

James Alan Bush,) Case No.: C 08-01354 (RS) JF
Plaintiff,)
v.) MOTION FOR INJUNCTIVE AND MONETARY
United States Attorney General,) RELIEF AGAINST DEFENDANT MIKE
et al.,) DOE 1 ON PETITION AND OTHER PAPERS
Defendants.) WITHOUT EVIDENTIARY HEARING OR
) ORAL ARGUMENT
-----)
) Judge Jeremy Fogel

1 Plaintiff, James Alan Bush, and petitioner in the above-titled
2 cause, moves the court, in connection with the complaint filed on March
3 10th, 2008, in this matter, to consider the petitioner's request for
4 mandatory injunctive relief and the award of damages based on the
5 memoranda, affidavit, and exhibits of the petitioner without evidentiary
6 hearing, and without oral argument, unless such is desired by the
7 court. Petitioner respectfully urges the court to set a date for
8 respondent to file his answer. The court is urged to set a further
9 date later for respondent to file his affidavits and memorandum, with a
10 subsequent date for petitioner to file, if necessary, a reply memorandum.

11 In support of this motion, petitioner submits the following:

- 12 1. The matters involved are subject to prompt consideration by the
13 court.
- 14 2. The court must only satisfy itself that the petitioner has
15 reasonable cause to believe that the property he lawfully
16 possesses has been unlawfully converted for the use of the
17 respondent.

18

19 **PRELIMINARY STATEMENT**

20 This is a petition by Plaintiff, James Alan Bush, against,
21 Defendant, Mike DOE 1, for conversion of property, and seeks to
22 recover damages, pursuant to Civ. Code §§ 3336-3338, and to recover
23 the reasonable value of the property converted, pursuant to Civ. Code
24 § 3336; or, in the alternative, to recover the property itself, pursuant
25 to Civ. Code § 3379; Code Civ. Proc. §§ 511.010-516.050 (claim and
26 delivery).

Defendant Mike DOE 1 is required to return wrongfully acquired property, even in the absence of any demand made by the owner for the return of wrongfully acquired property, pursuant to Civ. Code §§ 1712 and 1713.

MOTION FOR INJUNCTIVE AND MONETARY RELIEF

Plaintiff complains and for this cause of action for conversion of property alleges as follows:

1. Plaintiff was a resident of the City of San Jose, County of Santa Clara, State of California, residing at 1745 De Marietta Avenue Apartment #3.
 2. Defendant, Mike DOE 1, now is, and at all times relevant to this action was, a resident of the City of Sunnyvale, County of Santa Clara, State of California, residing at 204 East Weddell Drive.
 3. Plaintiff is ignorant of the true name of the defendant sued herein as Mike DOE 1, and therefore sues this defendant by such a fictitious name. Plaintiff will amend this complaint to allege his true name when ascertained.
 4. At all times herein mentioned, and in particular on or about November 15th, 2007, Plaintiff was, and still is, entitled to the possession of the following personal property, namely:
 - Apple MacBook Pro
A copy of the purchase receipt is attached hereto as Exhibit "A" and made a part hereof.
 - Brenthaven Laptop Case
 - U.S. Passport

1 • DVDs, containing electronic data

2 5. On or about November 15th, 2007, and at Sunnyvale, California, the
3 above-mentioned property had a value of \$3,500.

4 6. On or about November 15th, 2007, Defendant Mike DOE 1 took the
5 above-mentioned property from Plaintiff's possession and converted
6 the same to his own use.

7 7. On or about November 17th, 2007, Plaintiff demanded the immediate
8 return of the above-mentioned property; but, Defendant Mike DOE 1
9 failed and refused, and continues to fail and refuse, to return the
10 property to Plaintiff.

11 8. Between the time of Defendant's conversion of the above-mentioned
12 property to his own use and the filing of this action, Plaintiff
13 expended the following time and money in pursuit of the converted
14 property, all to Plaintiff's further damage in the sum of \$1,500.

15 9. Defendant's act of failing to return personal property of Plaintiff
16 is an act of willful interference with that property, done without
17 lawful justification, by which Plaintiff, the person entitled to the
18 property, is deprived of its use and possession, and constitutes an
19 act of conversion.

20 10. The aforementioned act of the defendant was willful, wanton,
21 malicious, and oppressive, was undertaken with the intent to deprive
22 Plaintiff of property in which he lawfully possesses, and justify
23 the awarding of exemplary and punitive damages in the amount of
24 \$5,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against the Defendant, as follows:

- An injunction ordering the return of the property described herein, pursuant to Civ. Code § 3379 and Code Civ. Proc. §§ 511.010-516.050;
 - For the value of the property converted in the sum of \$3,500;
 - For interest at the legal rate on the foregoing sum pursuant to Civ. Code § 3336, from and after November 17th, 2007;
 - For damages for time and money properly expended in pursuit of the converted property in the sum of \$1,500;
 - For punitive and exemplary damages in the sum of \$5,000; and,
 - For such other and further relief as the court may deem proper, including damages for the proximate and foreseeable loss resulting from Defendant's conversion.

VERIFICATION

I, James Alan Bush, Plaintiff in the above-entitled action, have read the foregoing and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief; and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Jose, California.

Petitioner:

Dated:

PROPOSED ORDER GRANTING INJUNCTION

The motion of plaintiff, James Alan Bush, for injunctive relief and the award of damages was heard before the undersigned judge on [date], pursuant to a duly noticed motion filed by the plaintiff on April 25th, 2008. The court having considered the documentary evidence introduced by the plaintiff, and it appearing to this court that great or irreparable injury will be suffered unless such an order be issued.

IT IS ORDERED that Defendant Mike DOE 1 do the following:

- Return the property described herein, pursuant to Civ. Code § 3379 and Code Civ. Proc. §§ 511.010-516.050; or,
 - Pay to the plaintiff the value of the property converted in the sum of \$3,500; and,
 - Pay to the plaintiff for interest at the legal rate on the foregoing sum pursuant to Civ. Code § 3336, from and after November 17th, 2007;
 - Pay to the plaintiff for damages for time and money properly expended in pursuit of the converted property in the sum of \$1,500; and,
 - Pay to the plaintiff for punitive and exemplary damages in the sum of \$5,000.

Judge: _____ Dated: _____

Clerk:

James Alan Bush
1745 De Marietta Avenue #3
San Jose, CA 95126
(408) 982-3272

Plaintiff in pro per

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

James Alan Bush,) Case No.: C 08-01354 (RS) JF
Plaintiff,)
v.) PETITIONER'S MEMORANDUM OF POINTS
United States Attorney General,) AND AUTHORITIES IN SUPPORT OF
et al.,) MOTION FOR INJUNCTIVE AND MONETARY
Defendants.) RELIEF AGAINST DEFENDANT MIKE
) DOE 1
)
) Judge Jeremy Fogel

RELEVANT STATUTORY SCHEME

Conversion of property is governed under California law as follows:

- Civ. Code §§ 3336-3338 governs damages recoverable for conversion of property.
 - Code Civ. Proc. § 338(c) governs the time period in which action for conversion must be brought.
 - Civ. Code §§ 1712 and 1713 set forth the requirement that a person return wrongfully acquired property and provide that the owner need not make any demand for the return of wrongfully acquired property in order to bring an action for conversion.
 - Civ. Code § 3379 and Code Civ. Proc. §§ 511.010-516.050 entitles Plaintiff to bring an action for claim and delivery to recover the property itself.

CASE LAW

1. DEFENDANT'S ACT OF FAILING TO RETURN PERSONAL PROPERTY OF PLAINTIFF IS AN ACT OF WILLFUL INTERFERENCE WITH THAT PROPERTY, DONE WITHOUT LAWFUL JUSTIFICATION, BY WHICH PLAINTIFF, THE PERSON ENTITLED TO THE PROPERTY, IS DEPRIVED OF ITS USE AND POSSESSION, AND CONSTITUTES AN ACT OF CONVERSION.

A. **Conversion Defined.** Conversion is any act of willful interference with the personal property of another, or any act of dominion exerted over another's personal property, done without legal justification, depriving that person entitled to the property of its use and possession (see *de Vries v. Brumback* (1960) 53 Cal. 2d 643, 647, 2 Cal. Rptr. 764, 349, P.2d 532; *Weiss v. Marcus*

1 (1975) 51 Cal. App. 3d 590, 599, 124 Cal. Rptr. 297).

2 **B. Necessary Allegations.** In order to state a cause of action for
3 conversion, the plaintiff must allege first, his or her ownership
4 or right to possession of tangible property at the time of the
5 conversion; second, the defendant's conversion of the property;
6 and, third, damages (Franklin v. Municipal Court (1972) 26 Cal.
7 App. 3d 884, 902, 103 Cal. Rptr. 354).

8 **C. General Allegations of Wrongful Conversion Sufficient.** A general
9 allegation that defendant converted property to his or her own
10 use is sufficient to state a good cause of action in the absence
11 of a demurrer for uncertainty (see Haigler v. Donnelly (1941) 18
12 Cal. 2d 674, 681, 117 P.2d 331; Lowe v. Ozmun (1902) 137 Cal. 257,
13 260, 70 P. 87; Franklin v. Municipal Court (1972) 26 Cal. App. 3d
14 884, 902, 103 Cal. Rptr. 354).

15 2. PROPERTY CONVERTED BY DEFENDANT WAS THE PERSONAL PROPERTY OF
16 PLAINTIFF CONSISTING OF ELECTRONIC EQUIPMENT VALUED AT \$3,399 AND
17 THEREFORE WAS PROPERTY SUBJECT TO CONVERSION.

18 **A. Personal Property, Tangible or Intangible, Can Be Subject to
19 Conversion.** Every species of personal property, both tangible
20 and intangible and capable of being identified, can be subject to
21 conversion (Payne v. Elliot (1880) 54 Cal. 339, 340-342).

22 3. PLAINTIFF IS OWNER AND HAS RIGHT TO IMMEDIATE POSSESSION OF THE
23 PROPERTY CONVERTED AND THEREFORE HAS SUFFICIENT INTEREST IN THE
24 PROPERTY TO MAINTAIN AN ACTION FOR CONVERSION.

25 **A. Plaintiff Owned or Had Right to Immediate Possession of Property
26 Converted.** In order to state a cause of action for conversion,

1 the plaintiff must allege his or her ownership or right to
2 possession of the property in question at the time of the
3 alleged conversion (Franklin v. Municipal Court (1972) 26 Cal.
4 App. 3d 884, 902, 103 Cal. Rptr. 354).

5 **B. Plaintiff With Right to Immediate Possession Need Not Be in**
6 **Actual Possession at Time of Conversion.** A plaintiff who has the
7 right to immediate possession of the property at the time of
8 the alleged conversion need not be in actual possession of the
9 property at the time to maintain an action for conversion (see
10 Franklin v. Municipal Court (1972) 26 Cal. App. 3d 884, 901-902,
11 103 Cal. Rptr. 354).

12 3. THE PROPER MEASURE OF DAMAGES IN AN ACTION FOR CONVERSION OF
13 PERSONAL PROPERTY IS THE VALUE OF THE PROPERTY AT THE TIME OF THE
14 CONVERSION, PLUS INTEREST FROM THE TIME OF CONVERSION, OR AN AMOUNT
15 SUFFICIENT TO INDEMNIFY PLAINTIFF FOR THE NATURAL, REASONABLE,
16 AND PROXIMATE RESULT OF THE WRONGFUL ACT COMPLAINED OF, AND WHICH
17 A PROPER DEGREE OF PRUDENCE ON HIS OR HER PART WOULD NOT HAVE
18 AVERTED.

19 **A. Measure of Damages for Conversion.** The detriment caused by the
20 wrongful conversion of personal property is presumed to be
21 the value of the property at the time of the conversion, plus
22 interest from the time of conversion, or an amount sufficient to
23 indemnify the party for the natural, reasonable, and proximate
24 result of the wrongful act complained of, and which a proper
25 degree of prudence on his or her part would not have averted
26 (see Civ. Code § 3336).

B. **Cost of Property as Proof of Value.** Cost of goods is a circumstance tending to show value, and that evidence may be taken into consideration, along with other circumstances, when determining the subsequent value of property converted in order to establish the loss sustained (Wade v. Markwell & Co. (1953) 118 Cal. App. 2d 410, 431-432, 258 P.2d 497).

C. **Prejudgment Interest Available.** If the measure of damages is an amount sufficient to indemnify the party for the loss suffered, prejudgment interest may be awarded pursuant to the general prejudgment interest authority of Civ. Code § 3287(a) (Moreno v. Greenwood Auto Ctr. (2001) 91 Cal. App. 4th 201, 210-211, 110 Cal. Rptr. 2d 177).

4. PLAINTIFF IS ENTITLED TO AN AWARD OF EMOTIONAL DISTRESS DAMAGES
ARISING OUT OF DEFENDANT'S CONVERSION OF PERSONAL PROPERTY.

A. **Emotional Distress Damages Recoverable.** A plaintiff is entitled to recover emotional distress damages growing out of a defendant's conversion of his or her personal property (Gonzales v. Personal Storage, Inc. (1997) 56 Cal. App. 4th 464, 477, 65 Cal. Rptr. 2d 473).

ARGUMENTS

1. AN INJUNCTION AGAINST DEFENDANTS SHOULD ISSUE BECAUSE IT IS LIKELY THAT PLAINTIFF WILL PREVAIL ON THE MERITS OF HIS CLAIM.

In order to qualify for an injunction, the plaintiff must demonstrate that he is likely to succeed on the merits of his lawsuit and that he is likely to suffer greater harm from a

failure to issue the injunction than the harm that would befall the defendant if the injunction is issued [O'Connell v. Superior Court (2006) 141 Cal. App. 4th 1452, 1467-1468, 47 Cal. Rptr. 3d 147; Teamsters Local 856 v. Priceless, LLC (2003) 112 Cal. App. 4th 1500, 1509-1510, 5 Cal. Rptr. 3d 847; White v. Davis (2002) 98 Cal. App. 4th 969, 981, 121 Cal. Rptr. 2d 51].

Plaintiff is likely to succeed on the merits of his action because the defendant's action clearly violates California Penal Code § 484(a). Moreover, it is inconceivable that the defendant could articulate any legally justifiable excuse for her actions. Since plaintiff will surely succeed on his claim of a violation of California Penal Code § 484(a), he is likely to succeed on his Civ. Code § 3336 cause of action.

2. AN INJUNCTION IS NECESSARY TO PREVENT CONTINUING AND IRREPARABLE INJURY TO PLAINTIFF AND THE BALANCE OF HARSHIPS FAVORS PLAINTIFF.
The continuing harm to the plaintiff, if an injunction does not issue, is irreparable, in that he will continue to be deprived of the use of his property. An injunction may be granted when it appears by the verified petition and affidavits that the continuance of some act during the litigation would produce irreparable injury to a party in the action [Code Civ. Proc. § 526(a)(2)]. An order granting an injunction is not fatally flawed because it contains no explicit finding that the injunction is necessary to prevent irreparable injury [Conover v. Hall (1974) 11 Cal. 3d 842, 850, 114 Cal. Rptr. 642, 523 P. 2d 682].

Under the "irreparable injury" standard, an injunction may issue

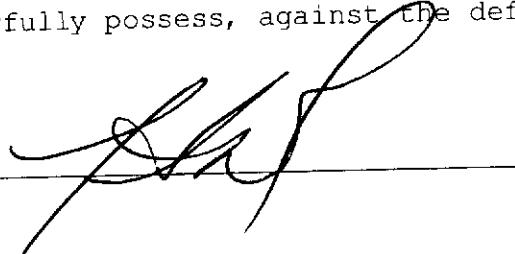
1 to prevent wrongs of repeated and continuing character ones that
 2 cause damages estimable only by conjecture and not by any accurate
 3 standard [Huong Que, Inc. v. Luu, 150 Cal. App. 4th 400, 417-418, 58
 4 Cal. Rptr. 3d 527; People ex rel. Gow v. Mitchell Brothers' Santa Ana
 5 Theater (1981) 118 Cal. App. 3d 863, 870-871, 173 Cal. Rptr. 476; Wind
 6 v. Herbert (1960) 186 Cal. App. 2d 276, 285, 8 Cal. Rptr. 817].
 7 By comparison, no harm will befall the defendant as a result of
 8 the proposed injunction. Thus, the balance of any hardships to be
 9 considered weighs substantially in favor of the plaintiff and the
 10 issuance of an injunction.

11 3. AN INJUNCTION IS NECESSARY TO AVOID MULTIPLICITY OF SUITS.

12 An injunction will issue when necessary to prevent a multiplicity of
 13 judicial proceedings [Code Civ. Proc. § 526(a)(6)]; particularly, in
 14 cases in which many claims that have not been adjudicated have been
 15 brought into equity to be the subject of a single trial and decree
 16 [Verdier v. Verdier (1962) 203 Cal. App. 2d 724, 735, 22 Cal. Rptr.
 17 93].

18
 19 CONCLUSION

20 For the reasons stated above, the motion of the plaintiff for a
 21 mandatory injunction compelling the surrender of Plaintiff's property,
 22 which he lawfully possess, against the defendant should be granted.

23 Petitioner: 

24 Dated: 4-25-08

James Alan Bush
1745 De Marietta Avenue #3
San Jose, CA 95126
(408) 982-3272

Plaintiff in pro per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

James Alan Bush,

) Case No.: C 08-01354 (RS) JF

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) AFFIDAVIT IN SUPPORT OF MOTION FOR
)
) INJUNCTIVE AND MONETARY RELIEF
)
) AGAINST DEFENDANT MIKE DOE 1

United States Attorney General,
et al.,

))
))
)) Judge Jeremy Fogel

Defendants.

AFFIDAVIT

I, Long Thang Cao, being first duly sworn, deposes and declare as follows:

1. I make this declaration in support of motion for injunctive and monetary relief made by Plaintiff, James Alan Bush, against Defendant, Kathy Bickel.
 2. The facts and allegations made in the aforementioned motion are a matter of my personal knowledge. I would be competent to testify to their truth if I were called as a witness.

Signed: _____ Dated: _____

JURAT

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on

this _____ day of _____, 20____.

by _____

personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____

EXHIBIT A

Purchase Receipt for
Apple MacBook Pro

Fry's Electronics		QUOTE #:	1805602					
Score #9 San Jose 55 East Tokay Road San Jose, CA 95112 PHONE: 408-287-1000 FAX: 408-287-1016		CREATION DATE:	10/15/2007					
		EXPIRATION DATE:	10/15/2007					
		LAST CALL DATE:	10/15/2007					
		PAGE:	1					
CUSTOMER QUOTATION								
CUSTOMER BILLING INFORMATION		CUSTOMER SHIPPING INFORMATION						
<p>JAMES BUSH</p> <p>CA 0</p> <p>VOICE: (408) 252-9140</p> <p>FAX:</p> <p>Email:</p>								
CUSTOMER ORDER NUMBER	ORDER DATE	RESALE INFORMATION	SRO NUMBER					
		BIN NUMBER						
LINE	PRODUCT CODE	ITEM DESCRIPTION	Unit Price	Adjustments	Net Price	Quantity	Ext. Price	SALES ASSOCIATE (S)
1	5044345	APPLE MACBOOKPRO 2.33 17	2,799.00	0.00	2,799.00	1	2,799.00	Delgado, Michael J. 105664
	2.33 INTEL CORE2 DUO							
	2GBMEM 160HD 17" SCRN							
	MA611LVA							
ITEM COUNT: 1								
TERMS								
QUOTATION TOTALS:	2,799.00	SALES TAX	230.92	QUOTATION TOTAL	3,029.92	TERMS		
<p>THANK YOU FOR CHOOSING FRY'S ELECTRONICS ASK YOUR SALES ASSOCIATE about our Low Price Guarantee!! PROTECT your product with our PERFORMANCE SERVICE CONTRACT!!</p> <p>THANK YOU FOR VISITING THE COMPUTER DEPARTMENT. FRY'S - Home of the Low Price Guarantee. To be Safe, Ask your Sales Associate about our Performance Service Contract.</p>								